

SCHEDULE 5

ENFORCEMENT

Forfeiture: England and Wales and Northern Ireland

14.—(1) An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any machinery or partly completed machinery on the grounds that there has been a contravention of regulation 7 or 8 in relation to it.

(2) An application under this paragraph may be made to a magistrates' court—

- (a) where proceedings have been brought in that court in respect of an offence in relation to some or all of the machinery or partly completed machinery under regulation 22;
- (b) where an application with respect to some or all of the machinery or partly completed machinery has been made to that court under section 15 or 33 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by paragraph 11; and
- (c) by way of complaint, where no application for the forfeiture of the machinery or partly completed machinery has been made under sub-paragraph (a) or (b).

(3) On an application under this paragraph the court shall make an order for the forfeiture of the machinery or partly completed machinery only if satisfied that there has been a contravention of regulation 7 or 8 in relation to it.

(4) A court may infer for the purposes of this paragraph that there has been a contravention of regulation 7 or 8 in relation to any machinery or partly completed machinery if satisfied that either of those regulations has been contravened in relation to a machine or partly completed machine which is representative of that machinery or partly completed machinery (whether by reason of its being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980, or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to sub-paragraph (7), where any machinery or partly completed machinery is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the machinery or partly completed machinery to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the machinery or partly completed machinery to any person otherwise than—
 - (i) to a person who carries on a business of buying machinery or partly completed machinery of the same description as that machinery or partly completed machinery and repairing or reconditioning it; or
 - (ii) as scrap (that is to say, for the value of materials included in the machinery or partly completed machinery rather than for the value of the machinery or partly completed machinery itself); and

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- (b) complies with any order to pay costs or expenses (including any order under section 35 of the 1987 Act as applied for the purposes of the enforcement of these Regulations by paragraph 11) which has been made against that person in the proceedings for the order for forfeiture.